

§ 129.4

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§ 129.4 Requirement for approval.

(a) Except as provided in § 129.5, no person who is required to register as a broker pursuant to § 129.3 of this subchapter may engage in the business of brokering activities pursuant to § 129.2(b) without first obtaining the approval of the Directorate of Defense Trade Controls for the brokering of any of the following:

(1) Any foreign defense article or defense service (*see* § 120.44 of this subchapter, and § 129.5 for exemptions); or

(2) Any of the following U.S. origin defense articles or defense services:

(i) Firearms and other weapons of a nature described by Category I(a) through (d), Category II(a) and (d), and Category III(a) of § 121.1 of this subchapter;

(ii) Rockets, bombs, and grenades as well as launchers for such defense articles of a nature described by Category IV(a), and launch vehicles and missile and anti-missile systems of a nature described by Category IV(b) of § 121.1 of this subchapter (including man-portable air-defense systems);

(iii) Vessels of war described by Category VI of § 121.1 of this subchapter;

(iv) Tanks and military vehicles described by Category VII of § 121.1 of this subchapter;

(v) Aircraft and unmanned aerial vehicles described by Category VIII of § 121.1 of this subchapter;

(vi) Night vision-related defense articles and inertial platform, sensor, and guidance-related systems of a nature described by Category XII(c) and (d) of § 121.1 of this subchapter;

(vii) Chemical agents and precursors described by Category XIV(a), (c), and (e) of § 121.1 of this subchapter, biological agents and biologically derived substances described by Category XIV(b) of § 121.1 of this subchapter, and equipment described by Category XIV(f) of § 121.1 of this subchapter for dissemination of the chemical agents and biological agents described by Category XIV(a), (b), and (e) of § 121.1 of this subchapter;

(viii) Submersible vessels described by Category XX of § 121.1 of this subchapter; and

(ix) Miscellaneous articles of a nature described by Category XXI of § 121.1 of this subchapter.

(b) [Reserved]

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§ 129.5 Exemption from requirement for approval.

(a) Unless paragraph (c) of this section applies, brokering activities undertaken for an agency of the U.S. Government pursuant to a contract between the broker and that agency are exempt from the requirement for approval provided that:

(1) The brokering activities concern defense articles or defense services solely for the use of the agency; or

(2) The brokering activities are undertaken for carrying out a foreign assistance or sales program authorized by law and subject to control by the President by other means, as demonstrated by one of the following conditions being met:

(i) The U.S. Government agency contract with the broker contains an explicit provision stating the contract supports a foreign assistance or sales program authorized by law and the contracting agency has established control of the activity covered by the contract by other means equivalent to that established under this subchapter; or

(ii) The Directorate of Defense Trade Controls provides written concurrence in advance that the condition is met.

(b) Unless paragraph (c) of this section applies, brokering activities regarding a foreign defense article or defense service (*see* § 120.44 of this subchapter) are exempt from the requirement for approval when arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea, except in the case of the defense articles or defense services specified in § 129.4(a)(2), for which approval is required.

(c) Brokers engaging in brokering activities described in paragraph (a) or (b) of this section are not exempt from obtaining approval from the Directorate of Defense Trade Controls if:

(1) The broker is not registered as required by § 129.3;

(2) The broker or any person who has a direct or indirect interest in or may

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benefit from the brokering activities, including any related defense article or defense service transaction, is ineligible as defined in §120.1(c)(2) of this subchapter; or

(3) A country or person referred to in §126.1 of this subchapter is involved in the brokering activities or such activities are otherwise subject to §129.7.

(d) Brokers who use the exemptions in this section must comply with all other provisions of this part 129.

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§ 129.6 Procedures for obtaining approval.

(a) All requests for approval of brokering activities must be made to the Directorate of Defense Trade Controls, be signed by an empowered official, and include the following information:

(1) The applicant's name, address and registration code;

(2) A certification on whether:

(i) The applicant or the chief executive officer, president, vice presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors is the subject of an indictment or has been otherwise charged (e.g., by criminal information in lieu of indictment) for, or has been convicted of, violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter;

(ii) The applicant or the chief executive officer, president, vice presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government; and

(iii) To the best of the applicant's knowledge, any other person involved in the brokering activities enumerated in the request for approval as defined in §129.2 is the subject of an indictment or has been otherwise charged (e.g., charged by criminal information in lieu of indictment) for or has been convicted of violating any of the U.S. criminal statutes enumerated in §120.27

of this subchapter, or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(b) The request for approval shall describe fully the brokering activities that will be undertaken, including:

(1) The action to be taken by the applicant to facilitate the manufacture, export, import, or transfer of a defense article or defense service (which may be referred to as a "defense article or defense service transaction");

(2) The name, nationality, address, and place of business of all persons who may participate in the brokering activities;

(3) A description of each defense article or defense service that may be involved, including:

(i) The U.S. Munitions List category and sub-category for each article;

(ii) The name or military nomenclature of each defense article;

(iii) Whether the defense article is significant military equipment;

(iv) Estimated quantity of each defense article;

(v) Estimated U.S. dollar value of defense articles and defense services;

(vi) Security classification; and

(vii) End-user and end-use; and

(4) A statement whether the brokering activities are related to a sale through direct commercial sale or under the U.S. Foreign Military Sales program or other activity in support of the U.S. Government.

(c) The empowered official signing the request for approval shall include a certification that the request is complete and accurate.

(d) If at the time of submission certain information required by paragraph (b) of this section is not yet available, this fact must be stated and explained in the certification required by paragraph (c) of this section. The Directorate of Defense Trade Controls will take any such explanation into account in deciding whether to approve the request.

(e) The period of validity for an approval may not exceed four years.

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